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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/689,012

10/20/2003

James R. Raskin

P-TN-3167A

4121

7590

08/25/2004

Black & Decker Inc.
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EXAMINER

GONZALEZ, MADELINE

ART UNIT

PAPER NUMBER

2859

DATE MAILED: 08/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/689,012	RASKIN ET AL.	
	Examiner	Art Unit	
	Madeline Gonzalez	2859	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 October 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 31-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 31-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 31 and 39-41 are rejected under 35 U.S.C. 102(e) as being anticipated by Goodrich et al. (U.S. 6,502,319) [hereinafter Goodrich].

Goodrich discloses laser level 44, as shown in Fig. 9, having:

- a housing 24;
- a first laser diode 14 disposed in the housing 24 for emitting a first laser beam along a first path;
- a first lens 20 disposed in the housing 24 in the first path for converting the first laser beam into a first planar beam, the first planar beam forming a first line 52 on a reference surface 48, as shown in Fig. 10;
- a hanging assembly connected to the housing for mounting the laser level 44 to the reference surface 48;

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- wherein the first line 52 is substantially horizontal and the reference surface is a substantially vertical wall 48;
- wherein the hanger assembly comprises a reference surface assembly that contacts the reference surface 48; and
- a magnet 45 disposed on one of the reference surface assembly and the housing, and a metal plate disposed on the other of the reference surface assembly and the housing.

3. Claims 31, 40 and 42 are rejected under 35 U.S.C. 102(e) as being anticipated by Malard et al. (U.S. 6,735,879) [hereinafter Malard].

Malard discloses a laser level, as shown in Fig. 1, having:

- a housing 12;
- a first laser diode 42 disposed in the housing 12 for emitting a first laser beam along a first path;
- a first lens 24 disposed in the housing 12 in the first path for converting the first laser beam into a first planar beam, as shown in Fig. 9A, the first planar beam forming a first line on a reference surface 77;
- a hanging assembly connected to the housing 12 for mounting the laser level to the reference surface 77;
- wherein the hanger assembly comprises a reference surface assembly that contacts the reference surface 77; and

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- wherein the reference surface assembly comprises at least one pin 26.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 32-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goodrich (U.S. 6,502,319) in view of Le (U.S. 5,539,990).

Goodrich discloses all the subject matter claimed above in paragraph 2 with the exception of a second laser diode, the lines being perpendicular and the lines being parallel.

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With respect to the second laser diode, the lines being perpendicular and the lines being parallel: Le discloses a laser level, as shown in Fig. 3, having a first laser diode 31 disposed in a housing for emitting a first laser beam along a first path, a first lens 51 disposed in the housing in the first path for converting the first laser beam into a first planar beam forming a first line on a reference surface, a second laser diode 32 disposed in the housing for converting a second laser beam along a second path, a second lens 52 disposed in the housing in the second path for converting the second laser beam into a second planar beam, the second planar beam forming a second line on the reference surface, wherein the first and second lines are substantially perpendicular, as shown in Fig. 2, and a laser diode 33 can form a line substantially parallel to the second line. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to add a second laser diode as taught by Le to the laser level disclosed by Goodrich in order to provide a horizontal and vertical planes without having to rotate the tool.

7. Claims 35-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goodrich (U.S. 6,502,319) in view of Vasile (U.S. 4,700,489).

Goodrich discloses all the subject matter claimed above in paragraph 2 with the exception of a detector circuit disposed in the housing for detecting a feature behind the reference surface, and the detector circuit controlling the first laser diode.

With respect to the detector circuit disposed in the housing for detecting a feature behind the reference surface and the detector circuit controlling the first laser diode: Goodrich teaches in Fig. 12 that a stud finder 58 can be attached to the laser level 44, said stud finder does not control the first laser diode 14; however, Goodrich does not teach that the stud finder is positioned in the housing of the level. Vasile discloses a tool, as shown in Fig. 1, having a detector circuit 9 disposed in a housing, said detector circuit detects studs. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide a stud finder as taught by Vasile in the housing disclosed by Goodrich in order to make the tool more compact. Furthermore, it would have been obvious to make the detector circuit to control the laser diode, so that, upon detecting the feature, the first laser diode lights up, as claimed by applicant, in order to provide a better visual indication of the location of a stud.

Double Patenting

8. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

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A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

9. Claims 31-42 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 31-42 of copending Application No. 10/277,474. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Rando discloses the projection of laser beams producing parallel and perpendicular lines. Toga discloses a tool having two laser diodes.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Madeline Gonzalez whose telephone number is (571) 272-2243. The examiner can normally be reached on Monday-Friday (8:00-5:30), alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F.F. Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MG



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